IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 211 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYA MOTI MOGIYA

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR BY MANKAD APP for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 08/12/2000

ORAL JUDGEMENT

Rule. Service of Rule is waived by Shri B.Y. Mankad, the learned APP for the revision respondent -State of Gujarat. The learned advocates for both the parties have jointly requested that this present Criminal Revision Application be heard and decided finally to day,

and therefore, with the consent of the learned advocates for both the parties, this present Criminal Revision Application is heard and decided finally today.

2. I have heard the learned advocates for both the parties in detail at length. I have gone through the judgment rendered by the learned Judicial Magistrate, First Class (Railway), Panch Mahals at Godhra in the case as well as the judgment rendered by the learned Appellate Judge rendered in appeal. I have also gone through the grounds stated in the memo of this present Criminal Revision Application.

3. The original accused Kanaiya Moti Mogiya of Criminal Case No. 4401 of 1987 which was pending on the file of the learned Judicial Magistrate, First Class (Railway), Panch Mahals at Godhra (who will be referred to as the learned Magistrate for the sake of brevity), has by filing this Criminal Revision Application, challenged the correctness, legality and propriety of the judgment dated 11/4/2000 rendered by the learned Additional Sessions Judge, Panch Mahals at Godhra (who will be referred to hereinafter as the learned Appellate Judge) rendered in Criminal Appeal No.2 of 1997.

4. The facts leading to this present Criminal Revision Application, in a nut shell, are as follows:-

On or about 23/6/1987 at about 21-00 hrs. accused was found with possession of different articles each of which was a "Railway Property" within the meaning of Sec.2(d) of the Railway Property (Unlawful Possession), Act 1966 (for short " the Act"). As per the case of the prosecution, as the accused was found with possession of such Railway properties, he has committed an offence punishable under Sec.3 of the Act, and therefore, it is the case of the complainant that along with the accused, some other eight persons were also found with the possession of goods (Railway's properties) on that day. Therefore, on or about 7th October, 1987, one complaint was lodged against nine persons, wherein it was stated that they have committed an offence punishable under Sec.3 of the Act. That complaint was lodged by one Shri R.P.Dashora, the Inspector, Dahod Railway station. On or about 1st December, 1997, charge Ex.10 was framed and thereafter, on reading over and explaining that charge to accused, he pleaded guilty. On the basis of the fact that accused pleaded guilty, the learned Magistrate rendered his judgment Ex.102 and convicted the accused under Sec.248 of the Criminal Procedure Code, 1973 (for short "the Cr.P.C.) for an offence punishable

under Sec.3 of the Act and was sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.3,000/and in default, to undergo further Simple Imprisonment for 60 days.

5. Being aggrieved against and dissatisfied with the said judgment of conviction and sentence, the accused preferred Criminal Appeal No.2 of 1997 to the Sessions Court, Panch Mahals at Godhra. After hearing the arguments of the learned advocates for both the parties and on perusal of record and proceedings of the case, the learned Appellate Judge, by rendering his judgment dt. 11/4/2000, dismissed the appeal of the appellant and thereby he confirmed the judgment of conviction and sentence rendered by the learned Magistrate.

6. Being aggrieved against and dissatisfied with the said judgment dt. 11/4/2000 rendered by the learned Appellate Judge in Criminal Appeal No.2 of 1997, the accused has preferred this present Criminal Revision Application.

7. Heard Shri M.M.Tirmiji, the learned advocate for the revision petitioner and Shri B.Y.Mankad, the learned APP for the revision opponent -State. Shri Tirmiji has argued that in the case in which the accused has been convicted and sentenced, there were other eight accused and out of that eight other accused, some had pleaded guilty to the charge and that accused were sentenced for Simple Imprisonment with some fine only, and therefore, the accused was under belief that as other accused have been given very lesser sentence, he would also be given lesser sentence in parity with sentence inflicted on other accused. In memo of this Criminal Revision Application, in Ground A, it has been contended by the revision petitioner that one Madan Behraji one of the accused of that case had pleaded guilty and was sentenced to pay a fine of Rs.200/- only and very lenient view was taken by the learned Magistrate. It has been contended in this Criminal Revision Application that accused was under the belief that he would be given the sentence of only fine, as it had happened in case of Madan Behraji, and hence, he pleaded guilty but the learned Magistrate inflicted very harsh sentence upon him.

8. I have perused Record and Proceedings of the case which has been called for from the lower Court. From the record, it appears that on or about 14th March, 1990, Madan Behraji and three other accused pleaded guilty and all the three accused were sentenced to undergo Simple Imprisonment till rising of the Court and to pay a fine

of Rs.200/-. That judgment is at Ex.63 in the case. From the record, it also appears that in this case, one of the accused namely Rama Kaliya Bhil had pleaded guilty on 24/1/1990 vide ex.48 and by judgment Ex.49, he was sentenced to undergo Simple Imprisonment for 25 days only. Then on 3/3/1990, one another accused Bhuliya Gulji had pleaded guilty vide Ex.23 and vide Ex.54, he was also sentenced to undergo Simple Imprisonment for 25 days.

9. Thus in this case, the learned Magistrate has inflicted different types of sentences on different accused. No reasons are assigned for inflicting lesser sentence. Mr. Tirmiji, the learned advocate for the revision petitioner has argued that no reasons are given by the learned Magistrate for inflicting such harsh sentence to the present petitioner. It is surprising and curious that the learned Magistrate has adopted different yardsticks for inflicting sentence which is varying from case to case and from accused to accused for the same offence. This approach of the learned Magistrate is not legal and proper. When nature of offence is the same and when different accused are involved in the very same case and if that accused have pleaded guilty, then whoever accused may be but all, must be given equal treatment and justice and in no case discriminatory order of sentence should have been passed by the learned Magistrate. Under the circumstances, on perusal of the record, it clearly appears that so far as order of conviction is concerned, it does not require to be disturbed and is to be maintained, but so far as sentence is concerned, this Court has power to examine the judgment with regard to propriety of the order of sentence also. In view of what is discussed hereinabove, the order of sentence imposed on the present revision petitioner requires to be modified, as same is not proper.

10. Shri Tirmiji has further argued that the accused is in Jail since 11th April, 2000 and thus, the accused has already undergone practically imprisonment of eight months. When other accused were sentenced for 25 days, for the same case, the sentence imposed on the present revision petitioner clearly appears to be harsh and it requires to be modified.

11. In view of what is stated hereinabove, this Criminal Revision Application is partly allowed. The order of sentence passed by the learned Judicial Magistrate, First Class, (Railway), Panch Mahals at Godhra in Criminal Case No. 4401 of 1987 on 11th April, 2000 is modified and accused -Kanaiya Moti Mogiya is

ordered to undergo Simple Imprisonment for a period already undergone by him. As stated by Mr. Tirmiji, accused has already paid the fine. In view of this, the accused Kanaiya Moti Mogiya is ordered to be made free forth with, if he is not required in any other case. Rule is made absolute to the aforesaid extent.

Date: 8/12/2000. (H.H.MEHTA,J.)
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